In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 735

JAKE KLEIN, JULIAN GARRETT, ET UX., PETITIONERS

v.

UNITED STATES OF AMERICA

JULIAN GARRETT, ET UX., NEILL GARRETT, ET UX., AND EARL WAGNER, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims in these consolidated actions (Pet. App. 1–7) is not yet reported.

JURISDICTION

The judgment of the Court of Claims was entered on April 14, 1967. A motion to review and to vacate the judgment was denied on July 20, 1967 (Pet. 2). The petition for a writ of certiorari was filed on Oc-

282-072—67

tober 17, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

QUESTION PRESENTED

Whether, when the United States condemns land in fee and pays just compensation based on the fair market value of the land as enhanced by a gravel deposit, it must pay additional compensation for a contract the owners had made with third parties providing for removal of the gravel upon payment of royalty.

STATEMENT

The Garretts were owners of two parcels of land in Marion County, Iowa. In 1962, the Garretts entered into two five-year gravel contracts under which Klein (as to one parcel) and Wagner (as to the other) were allowed to remove and stockpile gravel. Subsequent to the execution of the two contracts, the United States instituted a proceeding in the United States District Court for the Southern District of Iowa for the condemnation of land including the two parcels. Both Klein and Wagner were joined as parties in that proceeding.

On October 19, 1966, the district court confirmed an award of a condemnation commission, which found the just compensation for one of the tracts to be $121,800. Of this amount, $116,800 was apportioned to the Garretts as owners of the fee, and $5,000 was apportioned to Wagner for his gravel rights. In determining the total value of this tract, the commission specifically found a $16,000 increment attributable to sand and gravel. On December 13, 1966, the district

court confirmed a commission award of $123,345 as the value of the other tract. Of this amount, $122,345 was apportioned to the Garretts and $1,000 assigned to Klein's gravel interest. Again, the commission arrived at the overall value by finding that the tract was enhanced $6,000 due to sand and gravel.[1]

In February 1966 petitioners commenced these suits in the Court of Claims to recover compensation from the United States for the alleged taking of the two gravel contracts or the benefits enjoyed under those contracts (Pet. App. 2). The Court of Claims granted the United States' motion for summary judgment and denied petitioners' cross-motion for summary judgment. The court held that, to the extent the gravel contracts gave the third parties an interest in the land, such interest had been paid for in the district court action and that, to the extent the contracts constituted personal property, they were not taken but merely frustrated (Pet. App. 6).

ARGUMENT

As the petition makes clear (Pet. 12), petitioners seek compensation for the taking of "gravel contracts," as distinct from "gravel deposits." However, as the Court of Claims recognized, the contracts "were not taken by the United States at all but simply frustrated" (Pet. App. 6). The law is clear that the Fifth Amendment does not require compensation for con-

[1] *United States* v. *1,795.01 Acres, etc.*, Civil No. 5–1233, and *United States* v. *1,087.42 Acres, etc.*, Civil No. 5–1330, (S.D. Iowa). The Garretts have appealed from these condemnation proceedings.

sequential damages resulting, as here, from the frustration of contracts or business when land is condemned. *Omnia Commercial Co.* v. *United States,* 261 U.S. 502; *Mitchell* v. *United States,* 267 U.S. 341; *United States* v. *General Motors Corp.,* 323 U.S. 373, 379; *Mullen Benevolent Corp.* v. *United States,* 290 U.S. 89, 94–95; *Bothwell* v. *United States,* 254 U.S. 231, 233.

Furthermore, as the Court of Claims pointed out (Pet. App. 3), compensation has been paid for the interests in the gravel deposits of the landowners and of Klein and Wagner as well. Contrary to petitioners' supposition (Pet. 14–15), the Court of Claims did not rely on *res judicata,* but merely demonstrated that the just compensation requirement of the Fifth Amendment had been fully satisfied.

It is also clear that Iowa law, relied on by petitioners (Pet. 24–25), has no application here. Federal law determines what constitutes property for purposes of federal eminent domain. *United States* v. *Miller,* 317 U.S. 369, 379; *State of Nebraska* v. *United States,* 164 F. 2d 866, 867–868 (C.A. 8), certiorari denied, 334 U.S. 815.

There being no possible recovery for the gravel contracts themselves in these circumstances, all of petioners' collateral contentions concerning procedural matters (Pet. 10–11, 25–26) and the use of the property after the United States took possession (Pet. 8) become irrelevant. Accordingly no question warranting review by this Court is presented.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
J. EDWARD WILLIAMS,
Acting Assistant Attorney General.
EDMUND B. CLARK,
JOHN G. GILL, Jr.,
Attorneys.

NOVEMBER 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967